IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 152 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE GENERAL CO-OPERATIVE BANK LTD. - Petitioner(s)
Versus
RANSI CARGO INDIA LTD. - Respondent(s)

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Appearance :
MR PS PATEL for Petitioner(s) : 1,
MR SURESHKUMAR RAVI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 12/03/2007

ORAL JUDGMENT

1. The present company petition has been filed by the petitioner i.e. The General Co-operative Bank Ltd. for an appropriate order of winding up

of the respondent company i.e. Ransi Cargo India Ltd. under the provisions of Companies Act, 1956.

2. It is the case on behalf of the petitioner that a sum of Rs.75,39.402.93 ps is due and payable by the respondent company to the petitioner pursuant to the judgment and award passed by the learned Board of Nominees dtd.12.02.2004 in Lavad Suit No.15 of 2004 with further interest accrued thereon.

3. It is the case on behalf of the petitioner that inspite of judgment and award of learned Board of Nominees and inspite of various reminders and requests as well as demands, the respondent Company has neglected to pay aforesaid amount. It is submitted that the respondent company was served with the statutory notice as required under Sections 433 and 434 of the Companies Act, 1956. However, inspite of the fact that statutory notice was served upon respondent company there was neither any reply to the notice nor any payment was made. Hence, the

present petition is filed for an appropriate order of winding up the respondent company under the provisions of Companies Act, 1956.

4. This Court issued notices in the present Company Petition. Thereafter, having served with the notice of the present petition, the respondent company appeared through their advocate Shri Sureshkumar Ravi. Thereafter, the present Company Petition was adjourned time and again and again came up for hearing before this Hon'ble Court on 08.01.2007. Learned advocate appearing for respondent company was absent though the matter was called out on three different occasions on that day. Under such circumstances, this Court heard the matter ex-parte and by detailed order admitted the aforesaid company petition and passed an order advertising the admission of the company petition and notifying the day of final hearing.

5. Shri P S Patel, learned advocate appearing for petitioner has submitted that apropos order passed by this Court on 08.01.2007, the

admission of the company petition and date of final hearing has been advertised in two local newspapers i.e. “Indian Express” (English Daily) and “Sandesh” (Gujarati Daily), both Ahmedabad editions and affidavit to that effect has been filed on 13th February, 2007. Nobody has objected to granting of relief in the present company petition.

6. There is no reply filed to the present company petition. Learned advocate appearing for the respondent company is also absent today when the matter is called out.

7. Considering the averments made in the petition which are not disputed, there is judgment and award passed by the learned Board of Nominees dtd.12.2.2004 passed in Lavad Suit No.15 of 2004 against the respondent company and the learned Board of Nominees has passed a decree of Rs.75,39.402.93 with further interest. Though respondent company is served with statutory notice, neither there was any reply to statutory notice nor any payment has been made.

Considering the statutory presumption which are required as per Section 434(1) (a) of the Companies Act as no payment has been made within period of 21 days from the date of receipt of statutory notice the respondent company is deemed to be unable to pay the debts to the petitioner bank creditor. The amount is not disputed by the respondent bank. There is no concrete proposal on behalf of the respondent company.

8. Under such circumstances and considering the judgment and award passed by the learned Board of Nominees and considering the fact that neither reply is filed to statutory notice nor any reply to present petition is filed, the respondent company has lost its financial substratum and not in a position to debts to the petitioner as well as to other creditors.

9. Under such circumstances, the respondent company is required to be ordered to be wound up.

10. For the reasons stated above present Company Petition is allowed and the respondent company i.e. Ransi Cargo India Ltd. is ordered to be wound up. The Official Liquidator attached with this Court is appointed as Official Liquidator for the respondent company. The Official Liquidator is hereby directed to take possession of the property (movable and immovable) of the respondent company along with its bank accounts, cash and accounts books etc. The Official Liquidator shall submit his report within a period of three months. If required, he can take services of the Official Valuer for the purpose of preparation of possession note etc. No costs.

(M.R.SHAH, J.)

Amit/-